IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RABBI MERRILL SHAPIRO, REVEREND KENT SILADI, REVEREND HARRY PARROTT, JR., REVEREND HAROLD BROCKUS, RABBI JACK ROMBERG, REVEREND BOBBY MUSENGWA, ANDY FORD, LEE SWIFT and SUSAN SUMMERS-PERSIS,

Plaintiffs,

v.

KURT BROWNING, in his official capacity as Florida Secretary of State,

Defendant,

and

STATE OF FLORIDA,

Intervenor/Defendant.

Case. No. 2011 CA 1892
(Honorable Terry Lewis)

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CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA
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PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

There are two claims at issue in this case. The first concerns the adequacy of the ballot statement contained in CS/HJR 1471, a joint resolution adopted by the 2011 session of the Florida Legislature that proposes amending Article I, § 3 of the Florida Constitution, and is slated to appear on the 2012 general election ballot as "Amendment 7." The second raises the constitutionality of § 101.161(3)(b)(2), Fla. Stat., which was also enacted by the 2011 session of the Legislature, and which authorizes the Attorney General to rewrite ballot statements that were

originally authored and enacted through joint resolutions of the Legislature, if they are found by a court to be defective.

On September 30, 2011, plaintiffs filed a motion for summary judgment on both claims. As to the first claim, plaintiffs showed that the Amendment 7 ballot statement is defective for three reasons: *first*, it will mislead voters by giving them the impression that the effect of the proposed amendment ("Amendment") is simply to conform the Florida Constitution to the requirements of the U.S. Constitution, when that is not the case; *second*, the ballot statement fails to communicate to voters the main effect of the proposed Amendment, which not only deletes from the Florida Constitution the longstanding prohibition against the use of public funds for religious entities but also *mandates* that the state provide funds to religious institutions in circumstances in which it would not otherwise be required to do so under the U.S. Constitution; and *finally*, the ballot statement's title—"Religious Freedom"—is itself misleading because the Amendment deletes from the Florida Constitution the specific understanding of religious freedom that has been part of the Constitution for over 125 years. Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment ("Pls' Br."), at 7-14. As to their second claim, plaintiffs showed that § 101.161(3)(b)(2) violates the Florida Constitution's strict separation of powers doctrine because it confers upon the Attorney General the authority to "edit" part of a legislative enactment. Pls' Br. at 14-17.[1]

On the same day, defendants filed their own motion for summary judgment, asserting that the Amendment 7 ballot statement is not misleading or incomplete, and that § 101.161(3)(b)(2) is constitutional. Defendants do not raise any disputed issues of material fact, and thus this matter is ripe for resolution on the parties' cross-motions for summary judgment.

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[1] The language of the proposed Amendment and ballot statement, as well as the pertinent portion of § 101.161(3)(b)(2), are set forth in plaintiffs' initial brief, at pp. 3-5.

Because the legal issues presented by the cross-motions for summary judgment are the same, this Opposition to defendants' motion should be read together with plaintiffs' brief in support of their motion, which sets out at greater length why summary judgment should be granted in favor of plaintiffs – and, accordingly, why defendants' cross-motion should be denied. We add the following by way of response to the specific contentions of defendants' brief.

ARGUMENT

I. Contrary To Defendants' Assertions, The Amendment 7 Ballot Statement Is Misleading And Fails To Give Voters Fair Notice Of The Main Effect Of The Proposed Amendment

Because defendants' brief is largely grounded on a misstatement of our argument about the effect of the Amendment, we begin by reviewing what the Amendment would do. Amendment 7 would change Section 3 of Article I of the Florida Constitution in two significant ways: *First*, it would delete entirely the long-standing constitutional prohibition against the use of public funds "in aid of any church, sect, or religious denomination or in aid of any sectarian institution." *Second*, it would add to § 3 the following language: "Except to the extent required by the First Amendment to the United States Constitution, neither the government nor any agent of the government may deny to any other individual or entity the benefits of any program, funding, or other support on the basis of religious identity or belief."

As discussed in our initial brief, *see* Pls' Br. at 8-10, removing the existing "no aid" clause, without more, would result in Article I, § 3 having the same meaning as the federal First Amendment – in effect, making it redundant. The addition of the new language, however, would go further, and its effect would be to go beyond what the federal Constitution requires by mandating that the State provide funding or benefits to religious entities under circumstances when the federal Constitution would not require it to do so.

It is now well established that, under the federal First Amendment, there are circumstances under which a state actor may *deny* funding or other benefits to religious entities, even though, as a federal constitutional matter, it would be *allowed* to provide such funds. The United States Supreme Court addressed this issue explicitly in *Locke v. Davey*, 540 U.S. 712 (2004), holding that "there is room for play in the joints" between the Establishment and Free Exercise Clauses of the First Amendment. *Id.* at 718. *Locke* upheld the State of Washington's denial of an otherwise generally available college scholarship to a student who would have used it to study devotional theology – even though it would have been *permissible* under the federal Establishment Clause for the State to have extended its scholarship program to fund the study of theology. *Id.* at 725. As we have noted, courts applying *Locke* have reached the same result with regard to other governmental benefits. *See* Pls' Br. at 9-10 (citing cases); *see, e.g., Eulitt v. Maine, Dep't of Educ.*, 386 F.3d 344, 354 (1st Cir. 2004) (upholding, under the First Amendment, Maine's exclusion of sectarian schools from a private-school voucher program); *Bush v. Holmes*, 886 So. 2d 340, 362-66 (1st DCA 2004) (en banc), *aff'd on other grounds*, 919 So. 2d 392 (Fla. 2006); *University of the Cumberlands v. Pennybacker*, 308 S.W.3d 668, 679-81 (Ky. 2010) (Kentucky Constitution's prohibition on providing public funds to sectarian university did not offend the First Amendment).

The effect of the proposed Amendment, and specifically of the addition of the proposed new language, would be to *remove* this "play in the joints" allowed by the federal Constitution, so that the Florida Constitution would *require* the State to provide funding or benefits to religious entities under some circumstances where, under the federal Constitution, it would be allowed but not required to do so.

We explained in our initial brief, and address further below, why the Amendment 7 ballot statement misleads voters about what the Amendment would do. Rather than engaging with that argument, defendants misstate our position, and thus focus their defense of the Amendment 7 ballot statement on attempting to rebut an argument of their own creation. Thus, defendants' central contention is that the language proposed to be added to § 3 "cannot be read to *compel* governmental funding of religious persons or institutions *in all circumstances* as Plaintiffs contend." Defendants' Motion for Summary Judgment ("Defs' Br.") at 10 (second emphasis added). *See also id.* at 11 ("But neither Amendment 7, nor its ballot summary, can be read – as Plaintiffs claim – to *compel* the government to require the funding of all religious entities or persons *under all circumstances*.") (second emphasis added).

To be clear, plaintiffs do *not* contend that the Amendment would compel governmental funding of religious entities "in all circumstances" or that the State would be compelled to fund "any and all religious entities and activities." *Id.* at 10. What the Amendment *would* undeniably do, by virtue of the added language, is compel the State to provide funding to religious entities under *certain* circumstances, *i.e.*, where such funding or benefits are made available to similarly situated non-religious entities. In such circumstances, the Amendment would remove from the State the ability to decline to fund religious entities—in circumstances under which the Florida Constitution has prohibited such funding for 125 years—even though its refusal to fund religious entities on the same terms as secular entities would be permissible under the federal Constitution.[2]

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[2] Although defendants of course did not have plaintiffs' summary judgment brief before them in drafting their brief, they did have plaintiffs' complaint, which clearly spelled out our argument as to the effect of the Amendment's new language. Review of defendants' citations to the complaint suggests that the misstatement of our argument may not have been inadvertent, for defendants' quotations from the complaint typically *delete* language that makes clear the nature

A. Having focused their attention on knocking down the "straw man" that the proposed Amendment would compel public funding of religious entities "under all circumstances," defendants' brief largely fails to engage with our principal argument – that the Amendment removes the State's ability to deny public funding or benefits to religious institutions under certain circumstances where such funding would not be required by the federal Constitution, and that the proposed ballot summary not only fails to make this clear, but that it is affirmatively misleading, in suggesting to voters that the Amendment is "consistent with" the federal Constitution.

The ballot summary not only fails to communicate to voters the full effect of the Amendment; it is also written in a way that *misleads* voters by stating that the proposed amendment "provide[s], *consistent with the United States Constitution*, that no individual or entity may be denied, on the basis of religious identity or belief, governmental benefits, funding or other support . . ." (emphasis added). The use of the phrase "consistent with" implies that the effect of the Amendment is to bring the Florida Constitution in line with—*i.e.*, make it "consistent with"—the federal Constitution. But, as we have explained, this is not the case, as the Amendment would actually compel the State to extend benefits to religious entities under

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of our contention. Thus, where paragraph 18 of the complaint alleges that the Amendment's new language "would require the government to extend funding to religious institutions under certain circumstances," Compl. ¶ 18, defendants truncate their quotation to leave off the phrase "under certain circumstances," Defs' Br. 10 n.6 – and they do so in support of their attribution to us of the argument that the Amendment would require such funding under "all" circumstances. *Id.* at 10, 11. Similarly, defendants quote paragraph 28(a) of the complaint as stating that the Amendment "would give religious institutions a constitutional right to public funding" and "would in fact *require* funding of religious individuals or entities ...," Defs' Br. at 11 – when the complaint actually asserts that the Amendment "would give religious institutions a constitutional right to public funding *that they do not have under the United States Constitution*," and that it "would in fact *require* funding of religious individuals or entities *under many circumstances*." Compl., ¶ 28(a) (emphasis added in part). *See also* Defs' Br. at 10 n.6 (quoting Compl. ¶ 21 but omitting its final phrase, "than is conferred by the United States Constitution").

circumstances when the federal Constitution would not require it to do so. Instead of addressing this issue, defendants' discussion of the "consistent with" language rests largely on their distortion of our position. Defs' Br. at 10-12.[3]

Only in a single paragraph do defendants attempt to come to grips with the ballot summary's "consistent with" language. They suggest one conceivable reading of that language that might possibly occur to voters—that is, that the "consistent with" language "let[s] voters know that Amendment 7 cannot conflict with federal constitutional principles." *Id.* at 12. It is certainly *possible* that some voters would read the language of the ballot summary in this manner. But that reading is not the only, or even the most natural way to read this language, and the possibility of such a reading only demonstrates that the ballot summary is, at best, *ambiguous* as to the meaning of the "consistent with" phrase. This ambiguity is fatal, as the ballot summary must express the substance of the amendment in "clear and unambiguous" terms. § 101.161(1), Fla. Stat.; *Florida Educ. Ass'n v. Florida Dep't of State*, 48 So. 3d 694, 700 (Fla. 2010); *see also Florida Dep't of State v. Florida State Conference of NAACP Branches*, 43 So. 3d 662, 664-65 (Fla. 2010); *Florida Dep't of State v. Mangat*, 43 So. 3d 642, 648 (Fla. 2010) (ballot summary defective because, among other reasons, statement regarding health care mandates was ambiguous). In short, even if the "consistent with" language of the ballot summary is merely ambiguous – rather than clearly misleading – as to the meaning and effect of the Amendment, it is in either event defective.

[3] It is *not*, of course, plaintiffs' contention, as defendants assert, that the "consistent with" language "suggests that voter approval of the amendment is 'required.'" Defs' Br. at 11 (quoting Complaint ¶ 28(a)). Once again, the attribution to plaintiffs of this contention rests on an incomplete quotation of the language of the Complaint – which, in full, asserts that the "consistent with" language "suggests to voters that the Amendment is required by the United States Constitution or merely renders the Florida Constitution's church-state provisions the same as those of the United States Constitution." Compl. ¶ 28(a).

B. In addition, even if the ballot summary did not contain the misleading "consistent with" language, it would still be defective for failure to communicate to voters the "main effect," *Armstrong v. Harris*, 773 So. 2d 7, 18 (Fla. 2000), of the proposed amendment. *See* Pls' Br. at 12-13. The thrust of defendants' argument in response is that a ballot summary "'need not explain every detail or ramification' of a proposed amendment, but 'only the chief purpose.'" Defs' Br. at 9 (quoting *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986)). That assertion is not incorrect, but it is incomplete. Although a ballot summary need not explain every detail, it must give an elector "fair notice of the decision he must make," and it cannot "hide the ball" from the voters. *Armstrong*, 773 So. 2d at 15-16. Thus, a ballot summary cannot give voters only a partial explanation of the meaning of a proposed Amendment—it must fully inform voters of the "*sweep* of each proposal from a fair notification in the proposition itself that is neither less nor more extensive than it appears to be." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982) (emphasis added) (quoting *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976)). The Florida Supreme Court recently elaborated that while not every "detail or ramification" need be explained, the ballot summary must be "accurate and informative," so as to make certain that the "electorate is advised of the *true meaning, and ramifications*, of an amendment." *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010) (emphasis added) (quoting *Advisory Opinion to the Attorney Gen. re Tax Limitation*, 644 So. 2d 486, 490 (Fla. 1994)). Therefore, "[a] proposed amendment must be removed from the ballot when the title and summary do not accurately describe the *scope of the text* of the amendment, because it has failed its purpose." *Id.* (emphasis added).

Here, it is not enough for the ballot summary to state that the no-aid language would be repealed and that a "new provision prohibiting the denial of government benefits on the basis of

religious identity or belief" would be added to the Constitution. Defs' Br. at 8. That language does not explain the meaning and effect of the Amendment, in that it fails to tell voters that, by this Amendment, the State would relinquish discretion that it would otherwise enjoy under the United States Constitution, or that it would be required to extend funding to religious entities in circumstances not otherwise required by the federal Constitution. Consequently, the ballot summary fails to inform voters of the "true meaning"—or the "sweep" of the addition of this language to the Florida Constitution.

This case is, in this respect, unlike *Florida Education Association*, the sole precedent upon which defendants rely for this part of their argument. *See* Defs' Br. at 10-11. In that case, the court found that the ballot summary for an amendment that would permit larger class sizes did not have to disclose explicitly that the proposed amendment would reduce the amount of state funding for education, given that this result "flow[ed] naturally from the chief purpose" of the proposed amendment. 48 So. 3d at 703. Here, by contrast, the aspect of the Amendment that is not disclosed in the ballot summary—*i.e.*, the fact that the Amendment would compel the State to act in ways not required by the federal Constitution—does not "flow" from any of the information disclosed in the ballot summary, and thus remains hidden from voters.

The failure of the ballot summary to communicate to voters this fundamental aspect of the Amendment puts the ballot summary squarely in the company of others that have been found defective. *See* Pls' Br. at 12-13 (citing cases); *see also Florida State Conference of NAACP Branches*, 43 So. 3d at 664-65 (ballot summary communicated the *topic* of the proposed amendment to voters, but was defective because it failed to explain that the amendment would allow the Legislature to nullify the mandatory contiguity requirement in political redistricting). As the court held in *Florida State Conference*, the proposed amendment's constitutional

ramification was "a matter that should have been clearly and unambiguously stated in the ballot language. Failing this clear explanation, the voters will be unaware of the valuable right . . . which may be lost if the amendment is adopted." *Id.* at 669. So too here: the proposed ballot summary leaves the voters in the dark about the fact that the Amendment would remove from the State the discretion it would otherwise have under the federal Constitution, and it thus "hide[s] the ball," *Armstrong*, 773 So. 2d at 16, as to the Amendment's constitutional ramifications.

C. Defendants attempt to justify the ballot title, "Religious Freedom," by pointing out that it is "identical to the title of the section of the Florida Constitution that it proposes to amend." Defs' Br. at 13.

Defendants are correct that the title of the ballot statement is identical to the title of Article I, § 3 of the Florida Constitution—which is precisely *why* the title is misleading. For over 125 years, "Religious Freedom" has been used in the Florida Constitution to refer to the Jeffersonian concept that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." Thomas Jefferson, *A Bill for Establishing Religious Freedom* (June 12, 1779), *reprinted in* 5 *Founders' Constitution* 77 (Philip B. Kurland & Ralph Lerner eds., 1987).

But far from this understanding of religious freedom as including freedom from being compelled to support religious beliefs through taxation, the term is used in the ballot statement to describe an amendment that would remove the long-standing constitutional prohibition against public funding of religion and instead would *mandate* public funding of religious entities under certain circumstances. In other words, even if, as the defendants assert, the Amendment would further a particular understanding of "religious freedom," *see* Defs' Br. at 14 – *i.e.*, the notion that providing public funds to religious institutions furthers religious freedom – that

understanding of religious freedom, which the Amendment would write into the Constitution, is the opposite of what has, until now, been embodied in the Florida Constitution. Any voter who ascribed to "religious freedom" the meaning that it has historically had in the context of the Florida Constitution would be misled by its use to describe an amendment that not only eliminates constitutional protection of this notion of religious freedom, but in fact *requires* the state's taxpayers, under certain circumstances, to fund religious endeavors.

Given the manner in which "Religious Freedom" has historically been used in the Constitution, it is not enough to assert that it is a valid title because it pertains to the "topic of the amendment." Defs' Br. at 13-14. Used as it is in the ballot title, "Religious Freedom" is misleading "political rhetoric that invites an emotional response from the voter by materially misstating the substance of the amendment." *In re Advisory Opinion to the Att'y Gen. re Additional Homestead Tax Exemption*, 880 So. 2d 646, 653 (Fla. 2004). Such "apple pie" language is suspect in ballot statements, as a "voter responding to the emotional language of the title could well be misled as to the contents and purpose of the proposed amendment." *In re Advisory Opinion to the Att'y Gen. re Save Our Everglades*, 636 So. 2d 1336, 1341 (Fla. 2004). Amendment 7's ballot statement is defective for this reason as well.[4]

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[4] We would be remiss if we did not address in passing the *amicus curiae* brief filed by the Florida Catholic Conference. The brief is notable for its near-silence on the legal issues actually presented in this case: Except for a short discussion on the last two pages of the brief that repeats the arguments made by the defendants, there is no analysis of whether the ballot statement is defective. *See* Amicus Br. at 16-17. Instead, the brief mainly consists of dubious historical conjecture about the origins of the "no-aid" clause that is currently part of Article I, § 3 (notwithstanding that the First District Court of Appeal has squarely held that "there is no evidence of religious bigotry relating to Florida's no-aid provision," *Holmes*, 886 So. 2d at 352 n.9), as well as argument that the no-aid provision "implicates First Amendment concerns" (even though the holdings in *Locke*, *Holmes*, and similar cases completely foreclose this line of argument). *See* Amicus Br. at 4-10. Given that virtually *all* of the arguments made by *amicus curiae* go solely to the wisdom of the proposal to amend the Constitution, it suffices to say that these arguments and assertions simply have no relevance to the questions before the Court in this

II. The Legislature's Delegation To The Attorney General Of The Authority To Rewrite Ballot Summaries Violates The Separation Of Powers Doctrine

Section 101.161(3)(b)(2), Fla. Stat., provides that where a ballot statement that has been enacted by the Legislature as part of a joint resolution has been found by a court to be defective, "the Attorney General shall, within 10 days, prepare and submit to the Department of State a revised ballot title or ballot summary that corrects the deficiencies identified by the court." As we explained in our initial brief, this delegation of authority to the Attorney General to re-write part of the language of a Joint Resolution of the Legislature violates the "strict separation of powers doctrine," *State v. Cotton*, 769 So. 2d 345, 353 (Fla. 2000), found in Article II, § 3 of the Florida Constitution. *See* Pls' Br. at 14-17.

Defendants' principal argument simply misses the point. Defendants contend that § 101.161(3)(b)(2) does not violate the separation of powers doctrine because writing a ballot summary is not necessarily a uniquely legislative act, but rather can be characterized as akin "to a ministerial or administrative task." Defs' Br. at 18. Defendants seek to buttress this point by noting that many other states permit executive officials to draft ballot summaries for proposed constitutional amendments. *Id.* at 21 & Exh. A.

The flaw in this line of argument is its equation of drafting a ballot summary in the first instance – which certainly could be and in many states is treated as a ministerial task and assigned to some entity other than the legislature (or other sponsor of the amendment) – with rewriting a defective ballot summary that was adopted by the Legislature as part of the legislative enactment that placed the proposed amendment on the ballot.

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case. *See Florida Educ. Ass'n*, 48 So. 3d at 700 ("In reviewing the validity of ballot language submitted to the voters for a proposed constitutional amendment, this Court does not consider or review the substantive merits or wisdom of the amendment.").

Under the constitutional amendment provisions currently in effect in Florida, preparing a ballot statement is an integral part of proposing a constitutional amendment. When it is the Legislature that proposes the amendment, it does so through a Joint Resolution enacted by supermajorities of both Houses. *See* Fla. Const., art. XI, § 1. This legislative enactment contains not only the proposed language of the amendment itself, but also the ballot statement that is submitted to the voters. *See* § 101.161(3)(a), Fla. Stat.; CS/HJR 1471 (Exh. A to Pls' Br.), at 5-6.

We agree with defendants that it need not be so. The Legislature surely could amend the applicable statutes to provide that, even though the Legislature (or other sponsor of an amendment) determines the amendment language itself, the ballot statement would be drafted by some other official – such as, for example, the Secretary of State or the Attorney General. This, as defendants point out, is the procedure followed in a number of states.[5] Adopting some such procedure has been suggested by members of the Florida Supreme Court,[6] and we do not contend that such an arrangement would violate the separation of powers doctrine.[7]

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[5] *See, e.g.*, Ariz. Rev. Stat. § 19-125D; Colo. Rev. Stat. § 1-40-106; Md. Code Ann., Election Law, § 7-103(c)(1); 25 Pa. Cons. Stat. § 2621.1; S.D. Codified Laws § 12-13-9.

[6] *See, e.g.*, *Evans v. Firestone*, 457 So. 2d 1351, 1356-57 (Fla. 1984) (Overton, J., concurring specially) ("The state of Oregon has such a process which directs the *attorney general* to prepare a ballot summary . . . for constitutional proposals from both the legislature and the initiative process.").

[7] Such a system would have some obvious advantages. It would not involve one branch of government rewriting what another had enacted, and accordingly there would be no concern that ballot statements drafted by the Executive Branch would encroach upon the intent of the Legislature. In addition, authorizing an agency such as the Secretary of State or Attorney General to draft all ballot statements would likely reduce the number of successful challenges to ballot statements, by placing responsibility for the ballot statement in the hands of an official not subject to the amendment sponsor's obvious temptation to play "chicken" with the courts by writing a ballot statement slanted toward obtaining voter approval.

But that is not what is at issue here. Section 101.161(3)(b)(2) does not assign to the Attorney General the authority to draft a ballot statement in the first instance, but rather authorizes the Attorney General to rewrite language adopted by the Legislature as an integral part of a Joint Resolution. The Joint Resolution is a legislative enactment that expresses the intent of the Legislature, *see Mangat*, 43 So. 3d at 649-51, and it cannot be rewritten by an official of the Executive Branch of government without violating the separation of powers doctrine.

In *Mangat*, the Florida Supreme Court rejected the Department of State's argument that, as a remedy for a defective ballot summary, the court itself could determine that the entire text of the proposed amendment should be substituted for the ballot summary language adopted by the Legislature: "This Court does not have the authority to substitute the language that three-fifths of the members of the Legislature have voted to place on the ballot." 43 So. 2d at 650. Rather, where the Legislature has enacted a ballot statement, its enactment must be treated as a legislative act not subject to revision by other branches of government.

To be sure, the court in *Mangat* left open the possibility that it might be possible for the Legislature, by statute, to establish a procedure through which the courts could fashion a remedy for ballot statements found to be defective, by replacing the defective language. *See id.* at 651; *see also, e.g., Smith v. American Airlines, Inc.*, 606 So. 2d 618, 622 (Fla. 1992).[8] Whether or not such a procedure would pass muster under Florida's strict separation of powers doctrine has never been tested and, more to the point, is an issue not joined in this lawsuit. What is

[8] Neither *Mangat or Smith*, nor any of the several other opinions by members of the Florida Supreme Court that have urged the Legislature to establish some procedure allowing the courts to remedy defective ballot statements, *see* Defs' Br. at 22-25 (citing cases), has ever suggested that such a remedy could involve a delegation of legislative authority to the Executive Branch.

abundantly clear, however, is that the process the Legislature enacted here – delegating to the Attorney General, a member of the Executive Branch, the authority to rewrite a ballot summary that had been enacted by the Legislature as part of a Joint Resolution – cannot be squared with the principle of the separation of powers embodied in the Florida Constitution.

CONCLUSION

For the reasons set forth above, the Court should deny defendants' motion for summary judgment and grant plaintiffs' motion for summary judgment. The Court should also declare that the ballot statement enacted by the Legislature to describe proposed Amendment No. 7, CS/HJR 1471, is defective, and that § 101.161(3)(b)(2), Fla. Stat., is unconstitutional and void. Accordingly, Secretary Browning and all persons and entities acting under his direction or in concert with him should be enjoined from placing Amendment No. 7 on the 2012 general election ballot.

DATED this 14th day of October, 2011.

Respectfully submitted,

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